IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

OP.No. 1450 of 2001(V)

PETITIONER:

M/S.PARAGON RUBBER INDUSTRIES,
PARAGON BUILDINGS,
SREENIVASA IYER ROAD,
CHALUKUNNU,
KOTTAYAM-1, REP. BY
THE MANAGING PARTNER
REGI ABRAHAM.

BY ADV. SRI.C.K.THANU PILLAI

RESPONDENTS:
---

1. THE COMMISSIONER OF COMMERCIAL TAXES, PUBLIC OFFICE BUILDINGS, TRIVANDRUM-33.

2. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, KOTTAYAM.

3. THE ASSISTANT COMMISSIONER(ASSESSMENT), COMMERCIAL TAXES SPECIAL CIRCLE, KOTTAYAM.

BY G.P. SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON 20/03/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.2431/2001 IN O.P. NO.1450/2001

DISMISSED:

20.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER NO.21010157/84-85 DT.31.1.1989 OF R3.

P2: .DO. /85-86 .DO.

P3: .DO. /86-87 .DO.

P4: TRUE COPY OF ORDER NO.R.P.14/91 DT.4.3.91 OF R2.

P5: .DO. .DO.

P6: .DO. R.P. 14B/91 DT.4.6.91 OF R2.

P7: TRUE COPY OF APPLICATION IN FORM NO.31A DT.1.8.91 FILED BEFORE R1.

P8: .DO. .DO.

P9: .DO. .DO.

P10: TRUE COPY OF ORDER NO.R1-41299, 42000 & 42001/91 (STRP 501/91, 502/91 DT.3.8.2000 ISSUED BY R1.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....

O.P. No.1450 of 2001

.....

Dated this the 20th day of March, 2007.

JUDGMENT

The petitioner is challenging Ext.P10 whereunder the Commissioner of Commercial Taxes has dismissed second revision filed against order imposing penalty for availing concessional rate of tax through issue of Form 18 prescribed under Section 5(7) of the KGST Act, The petitioner purchased raw materials at concessional rate of tax for use in manufacture of products. However, in order to avail the concessional rate of tax, the final product should be liable to tax under the KGST Act. In other words, concessional rate is not available if the manufactured goods are despatched outside the State other than by way of sale in the State. Petitioner admittedly purchased chemicals at concessional rate and stock-transferred the goods manufactured with it outside the State. Since the final product was not subjected to tax in Kerala, penalty was levied under Section 5(7) of the KGST Act. When petitioner challenged the penalty order, the revisional authority upheld the levy of penalty in principle, but remanded the case for reconsideration based on guidelines issued by him. It is against this order petitioner filed second revision before the Commissioner which was

rejected against which this O.P. is filed.

2. I have gone through the impugned order of the Commissioner. It is seen that the only contention raised is that the item purchased is not industrial raw material, but an identifiable component part and according to the petitioner, the purchase is items covered by Section 5(3) of the KGST Act and not industrial raw materials covered by Section 5(7) of the KGST Act. I do not know on what basis the petitioner can contend that the chemicals used in the manufacture are components. Prima facie, the item purchased namely, chemical is industrial raw material used in the manufacture of Hawai chappals, straps, MC sheets etc., by the petitioner. In any case the petitioner has not established with facts as to how the item purchased can be treated as an identifiable component of the final product. In the circumstances, there is no scope for interference with Ext.P10 order. The O.P. is therefore dismissed as devoid of any merit.

C.N.RAMACHANDRAN NAIR
Judge

pms